

Bankruptcy Rule 8006  
Local Rule 2200-6(e)

In re Robert A. Decker

Case No. 395-35735-psh13  
District Ct. No. 96-692-HA

1/9/97          Haggerty aff'm PSH      Unpublished

Debtor's attorney appealed order of bankruptcy court order denying fees for legal services rendered in connection with this case. Although the appellant's argument that the bankruptcy court abused its discretion was based upon and often cited statements contained in the bankruptcy proceedings, the appellant failed to provide the district court with a transcript of that proceeding. In light of that fact the district court was unable to reach the merits of the appellants argument on appeal. The district court therefore affirmed the order of the bankruptcy court.

P97-8(4)

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In re:

ROBERT A. DECKER

Debtor,

Civil No. CV 96-692 HA

O R D E R

CLERK, U.S. BANKRUPTCY COURT,  
DISTRICT OF OREGON

JAN - 9 1997

HAGGERTY, Judge:

LODGED \_\_\_\_\_ RECD \_\_\_\_\_  
PAID \_\_\_\_\_ DOCKETED *W*

Debtor Robert A. Decker appeals from the December 29, 1995 Order of the bankruptcy court denying an award of attorney fees pursuant to 11 U.S.C. 330. For the reasons stated in the opinion, the judgment of the bankruptcy court is affirmed. Decker's appeal is therefore dismissed.

IT IS SO ORDERED.

Dated this 8 day of January, 1997.

*Ancer L. Haggerty*

Ancer L. Haggerty

United States District Judge

Certified to be a true and correct  
copy of original filed in my office.

Date: 5/14/97  
Donald M. Cinnamond, Clerk

By: K. W. Wright, Deputy

1 - ORDER

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(19)

Certified to be a true and correct  
copy of original filed in my office.

Date: 5/14/97  
Donald M. Cinnamond, Clerk  
By: [Signature], Deputy

Entered 5/13/96  
By [Signature] M. CINNAMOND  
Deputy

FILED

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON

JAN - 9 1997 5/15/97

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395-35735

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In re:

ROBERT A. DECKER

Debtor,

Civil No. CV 96-692-HA

OPINION

MAGAR E. MAGAR  
1616 N.W. Northrup Street  
Portland, Oregon 97209  
for Appellant

Mark Block  
P.O. Box 5000-01  
Portland, Oregon 97201  
Attorney for Chapter 13 trustee, Myers

HAGGERTY, District Judge:

**BACKGROUND**

Robert A. Decker ("Debtor"), with the assistance of his  
attorney, Magar E. Magar, filed a Voluntary Petition for bankruptcy

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1 relief in April 1995 (Case No. 395-32748).<sup>1</sup> That case was dismissed  
2 by the bankruptcy court for failure to include required schedules in  
3 the filing. In December 1995, Debtor again sought the assistance of  
4 Magar in obtaining bankruptcy relief (Case No. 395-34098). Again,  
5 the bankruptcy court was forced to dismiss the case due to an  
6 omission on the part of Magar. In August 1996, Debtor again sought  
7 Magar's assistance in obtaining bankruptcy relief (Case No. 395-  
8 35735). Pursuant to that case, presiding Judge Polly S. Higdon  
9 issued an order confirming Debtor's Plan in bankruptcy. Judge  
10 Higdon did not, however, grant Debtor's request for attorney fees  
11 despite his timely filing of a Fee Application pursuant to 11 U.S.C.  
12 329.

13 Debtor now appeals to this Court the bankruptcy court's refusal  
14 to grant him attorney fees for legal services rendered in connection  
15 with his bankruptcy proceedings. As of the date of this Opinion, no  
16 brief in opposition has been filed by the Trustee/Appellee.  
17 Accordingly, Debtor's appeal will be considered unopposed. For the  
18 reasons that follow, the decision of the bankruptcy court is  
19 AFFIRMED.

#### 20 STANDARD OF REVIEW

21 A bankruptcy court's decision is reviewed under the "clearly  
22 erroneous" standard for findings of fact and "de novo" as to  
23 conclusions of law. In re Nucorp Energy, Inc., 764 F.2d 655, 657  
24 (9th Cir. 1985). The decision whether to award attorney fees by a  
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27 <sup>1</sup> Because Debtor's "Brief and Excerpts of the Record" does not include a  
28 transcript, or portion thereof, from the bankruptcy court proceedings, all of the  
facts referenced herein are taken directly from statements contained in Debtor's  
Brief.

1 bankruptcy court will not be disturbed on appeal absent an abuse of  
2 discretion. In re Park Helena Corp., 63 F.3d 877, 880 (9th Cir.  
3 1995).

#### 4 DISCUSSION

5 For this Court to reach the merits of Debtor's arguments on  
6 appeal, Debtor must provide this Court with a factual record of the  
7 bankruptcy court proceedings which are pertinent to the appeal. To  
8 this end, Bankruptcy Rule 8006 requires that "[i]f the record  
9 designated by any party includes a transcript of any proceedings or  
10 a part thereof, the party shall immediately after filing the  
11 designation deliver to the reporter and file with the clerk a  
12 written request for the transcript and make satisfactory  
13 arrangements for payment of its cost." No such written request for  
14 the bankruptcy court transcript was filed in this case. Further,  
15 Local Rule 2200-6(e) states that an excerpt of record shall contain  
16 "true copies of all portions of the bankruptcy files and records  
17 each party is relying on in the appeal unless another party has  
18 previously filed a copy of the identical portion of the bankruptcy  
19 file."

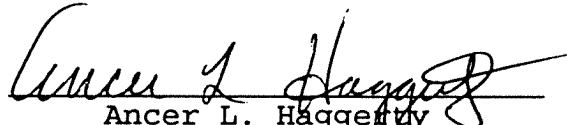
20 In the present case, Debtor's argument that his attorney fees  
21 were improperly denied and that such denial was an abuse of the  
22 bankruptcy court's discretion relies upon, and often cites,  
23 statements contained in the transcript of the bankruptcy court  
24 proceedings. However, the transcript of the bankruptcy court  
25 proceedings is not included in Debtor's "Excerpts of Record."  
26 Because Debtor has not provided a copy of the bankruptcy court  
27 transcript, and because another party has not previously filed a  
28 copy of that transcript, this Court does not have the factual record

1 necessary for proper review. Absent a complete factual record of  
2 the bankruptcy court proceedings, this Court shall not endeavor to  
3 determine whether an abuse of discretion has occurred.  
4 Consequently, this Court is unable to reach the merits of Debtor's  
5 arguments on appeal.

6 **CONCLUSION**

7 Based on the foregoing, the order of the bankruptcy court  
8 denying Debtor's request for attorney fees is AFFIRMED.

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11 Dated this 8 day of January, 1997.

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14 Ancer L. Haggerty  
15 United States District Judge  
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